SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 4

EVELYN TREINIES,

Petitioner,

vs.

SUNSHINE MINING COMPANY, KATHERINE MASON, T. R. MASON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONER'S REPLY TO THE BRIEF OF RESPONDENT, THE SUNSHINE MINING COMPANY.

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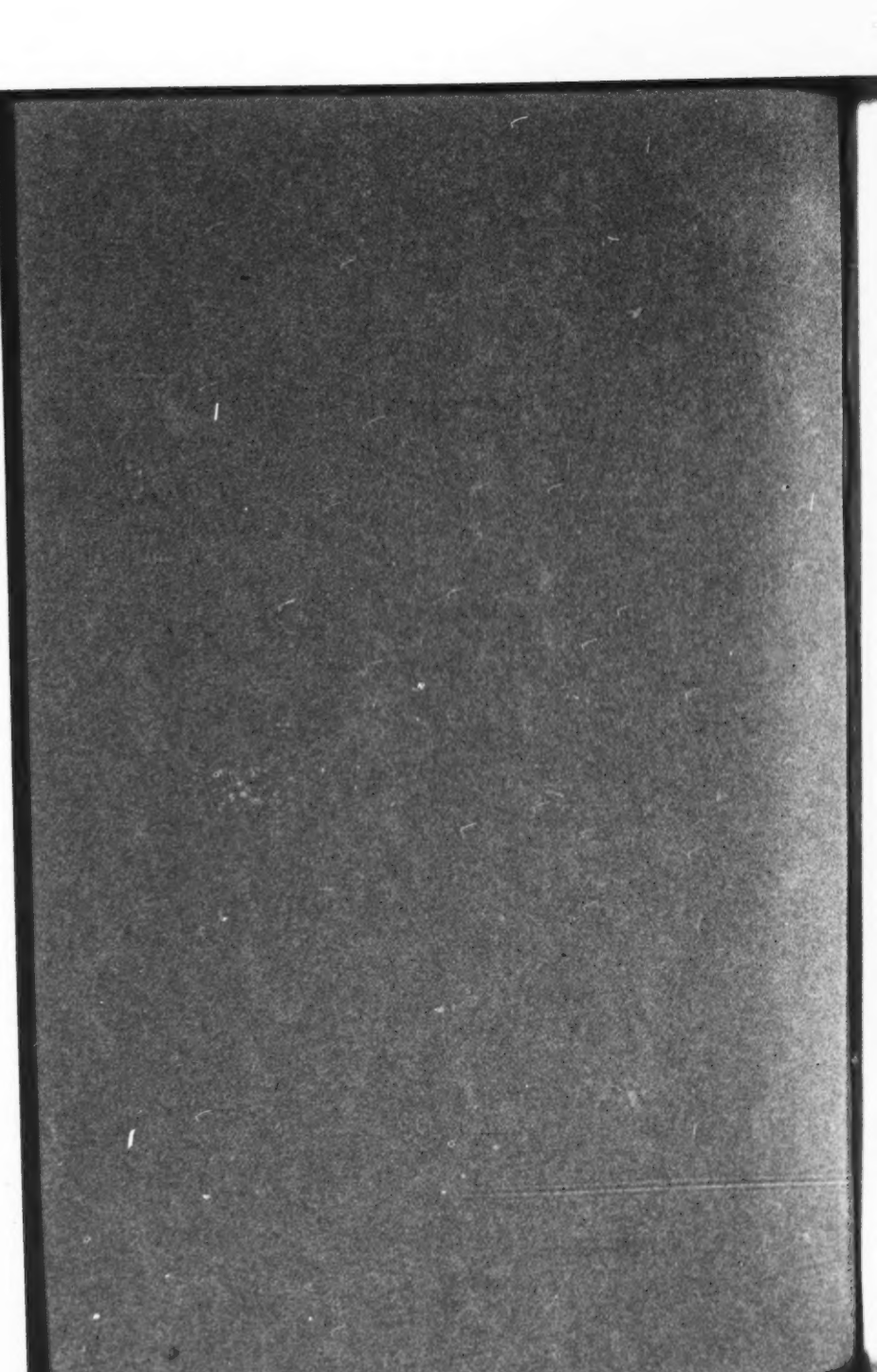

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PETITIONER'S REPLY TO THE BRIEF OF RESPONDENT, THE SUNSHINE MINING COMPANY.

Respondent, the Sunshine Mining Company, in its brief as filed a statement of the case which naturally forms the asis of its argument. Petitioner's counsel in their opening ief have attempted to be meticulous in their statements of e facts and the law of the case.

We find on page 12 of respondent (Sunshine Mining Com-ny's) brief a discussion of the order of the Washington perior Court in the probate proceedings made May 31, 35. Respondent says:

> "This order purported to adjudicate John Pelkes to be the owner of said 30,598 shares of stock (R. 282)."

In other words, the order declared Pelkes to be the owner of the stock and established his title thereto as against the Masons. It cleared title thereto for any assignees of the same who might have acquired it from Pelkes prior to the date of the order. In that sense it established Miss Treinies' ownership in the stock.

Counsel proceeds:

> "This order did not however, as stated on page 6 of petitioner's brief award the Sunshine stock to Pelkes' transferee, Evelyn Treinies."

Technically, we stand corrected. However, the inaccuracy is immaterial because, IN EFFECT, the order did just that thing. Since there never has been any question in any of these proceedings concerning the validity of Pelkes' assignment to Treinies; since respondent "admitting the validity of said order as a judgment" (page 29, Brief of respondent, Sunshine Mining Company), also admits that the order established Pelkes' title to the stock while he had it and also admits the validity of the assignment of Pelkes to Treinies of 16,000 shares of the stock. (See page 30, Brief of respondent, Sunshine Mining Company), and the fact that it transferred on its books the said stock to Treinies, the order of May 31, 1935, IN EFFECT, did clear the title of petitioner Treinies to that stock by awarding it to her assignor, Pelkes, as against the Masons. Respondent further says:

> "nor did it restrain the Idaho group from further litigating the matter in any court".

If the use of the expression "any court" be open to criticism we will answer the same by quoting from the order of May 31, 1935, itself (R. 291 (11)):

> "On this petition Pelkes obtained a temporary restraining order, restraining Mrs. Mason from prosecuting the action *in Idaho* until the administration of the Amelie Pelkes estate was completed, * * *"

We merely mention that hairsplitting, in passing. The injunction was from proceeding "in Idaho" and not from proceeding in "any court". Further comment is unnecessary.

On page 14 of respondent's brief we come to a really serious matter. Respondent up to this point had been setting out his statement of the case chronologically and without evidencing any particular bias. He now says:

> "At this time, March 17, 1937, the records in the Idaho and Washington state courts were in this status"

and then proceeds to tell this Court what the status was. However, the most important fact which forms the crux of the entire controversy was omitted (inadvertently, of course). We will, therefore, restate the first ten lines following the word "status" of respondent's paragraph, inserting therein, in italics, what it omitted.

> "There was a judgment and decree of the State District Court of Idaho which had been modified and affirmed by the Supreme Court of the State of Idaho which adjudged Katherine Mason to be the owner of said 15,299 shares of stock in the Sunshine Mining Company; on this judgment and decree of the Idaho Supreme Court, the Supreme Court of the United States had denied a petition for writ of certiorari." *There existed also a final decree of the Washington Superior Court, sitting in probate, finally distributing the estate of Amelia Pelkes by virtue of which final decree, the stock in question was declared to belong to John Pelkes and which decreed that Katherine Mason had no interest therein; this decree had never been appealed from.* In the Washington State Court suit was pending against the Masons and the Sunshine Mining Company involving the same stock".

This action was brought by the Seattle First National Bank as administrator of the estate of John Pelkes, and Evelyn

Treinies, as a suit in equity, "as an original bill in the nature of a supplemental bill", to enforce the decree of the Superior Court of the State of Washington in the probate proceedings (R. 243) and to clear clouds from the title to the stock in question caused by the issuance of new certificates issued in accordance with the judgment of the Idaho District Court, and to enjoin certain named defendants from claiming rights to the stock in question by virtue of the decrees of the Idaho courts (R. 243). It was not an action brought to determine who was the owner of the stock.

The balance of the paragraph beginning on the last line of page 14 and completing page 15 need not be restated. While it shows some bias and prejudice against petitioner herein, we deem that of no particular importance.

Respondent begins its argument on page 16 by reiterating the argument of the decision of the Circuit Court of Appeals, wherein that court attempted to show why it believed that the United States District Court had jurisdiction of the action. The court recites the jurisdictional requisites for an interpleader action provided for by Interpleader Act enacted January 20, 1936. It then asserts that all the mentioned requisites existed in this action and that therefore the United States District Court had jurisdiction.

Whether or not a controversy existed is open to discussion. The original controversy concerning the title to the stock had long ago been settled by the decision of the Superior Court of Washington made May 31, 1935, from which no appeal had ever been taken.

Whether or not a decision of another State court, which for lack of jurisdiction over the *subject matter,* is null and void, could possibly revivify the controversy is a matter of very serious conjecture. Fortunately a solution of that question is unnecessary here.

The Interpleader Act is not available here, notwithstanding that the requisite jurisdictional requirements apparently exist, because to apply the act would involve

(a) a failure to give full faith and credit to a valid State judgment, and

(b) interference with a State court, and consequently with a State.

By enjoining petitioner from proceeding with the action pending in Spokane County (R. 244), the United States District Court committed error. Section 265 of the Judicial Code, Act of March 3, 1911, R. S. Section 720, 28 U. S. C. A. 379, prohibits a United States court from staying proceedings in a State court except in cases where an injunction may be authorized by any laws related to proceedings in bankruptcy.

The provisions of the Interpleader Act do not repeal this Section. (*Lowther* v. *New York Life Ins. Co.*, 278 Fed. 405, C. C. A. 3, 1922). *Hill* v. *Martin*, 296 U. S. 393, 56 Sup. Ct. 278, 80 L. Ed. 293.

At page 28, respondent captions its argument "Idaho State Court judgment must be given full faith and credit". It advances the conclusion that the Idaho State court had jurisdiction of the parties (Treinies, Pelkes and Sunshine Mining Company), and of the subject matter. It asserts that jurisdiction of the parties named existed because they submitted to the jurisdiction of the court by appearing therein.

We deny its jurisdiction of the subject matter (the title to the mining stock involved) because that title had already been adjudicated by a final judgment or decree of a Washington State court having a prior and exclusive jurisdiction of both parties and the subject matter.

Respondent continues, saying that before the Idaho case was tried certain proceedings in the matter of the estate of

Amelia Pelkes were had in the Superior Court of the State of Washington, but it *omitted* to state that these proceedings were in estate proceedings that had commenced in 1922 and had never been closed, and that the proceedings respondent was referring to as brought on December 19, 1934, were *initiated* by the petition of Katherine Mason (R. 214).

Respondent's statement (page 29, line 2) that Evelyn H. Treinies was not a party to any of these proceedings is not accurate. Since Pelkes was her assignor, she stood in his shoes as far as the proceedings involved a question of title as between Pelkes and Mason. Therefore, in the sense that she was bound by the result of that controversy she was really a party to it, although not ostensibly so.

As respondent says (page 29, lines 9-10), this judgment or decree entered in the estate proceedings in the Washington court is relied on by petitioner as establishing her title to the stock in question. Its validity and legality were admitted (for argument's sake only), but since respondent, Sunshine Mining Company, "recognized" this judgment and acted accordingly (page 30) by transferring the stock on its books, as directed by John Pelkes, it seems futile for it to complain because it was not a party to the probate proceedings and to claim that the order or judgment of May 31, 1935 "could do nothing more than establish that John Pelkes at a previous time was the owner of 30,598 shares of the stock in the Sunshine Mining Company."

As a matter of fact, the Washington Superior Court, in Probate, had before it the Pelkes-Mason rival claims and passed upon that dispute and decided in whom the title lay.

After this admittedly "valid" and "legal" and final judgment, which respondent, the Sunshine Mining Company, had "recognized" and acted upon had been rejected as a defense to the action in the Idaho courts, said respond-

ent, possibly misled by the refusal of the United States Supreme Court to review the action of the Idaho courts on certiorari, became imbued with the idea that only the Idaho court's judgment was valid and that the Washington court's judgment was not. That is the purport of its argument here. It says, that, as far as the rival claims of Treinies and Mason are concerned and respecting the Sunshine Mining Company is

> "bound to recognize the decree of the Idaho court and that that judgment must be accorded full faith and credit in the State of Washington".

However, it utterly fails to tell why the "valid, legal" and recognized judgment of the Washington court does not merit the same full faith and credit in Idaho, notwithstanding that the constitution of the United States provides that it should. Just why the Sunshine Mining Company should select the Idaho State court's decision over the "legal" and "valid" and final decision of the Washington State court, which decision it had "recognized" and acted upon, is idle speculation.

Suffice it to say it made a free selection and guessed wrong because it ignored the law of the case.

At page 32 counsel cite and comment on the case of *Roche* vs. *McDonald*, 275 U. S. 449, 72 L. Ed. 365, and cite it as decisive of their contention.

The case is excellent authority in support of the contention that a judgment of a state court which had jurisdiction of the persons and the subject matter must be given full faith and credit in the courts of all other states, notwithstanding that the said judgment may have been founded on laws repugnant to those of those other states and founded upon error in the interpretation of their laws, and has been actually in contravention of the laws of those other states.

The case is excellent authority for the petitioner here. Counsel has overlooked several important details, however.

First: We are dealing, not with *statutes,* but with adverse *judgments,* of two different states.

Second: The "recognized," "legal" and "valid" judgment of the Washington court (referring to the decree of May 31, 1935) was made by a court that had jurisdiction of the persons (Masons actually invoked it in their own behalf) and of the subject matter. It was final. It was also prior and therefore exclusive as to jurisdiction.

Third: Because of this final judgment and the court's prior and exclusive jurisdiction which was pleaded in the Idaho State court, that court could not acquire jurisdiction of the subject matter. "Of course, a want of jurisdiction over either the person or the subject matter might be shown". (*Roche* vs. *McDonald, supra,* at Page 369 Law. Ed.)

The foregoing defines the limits of the jurisdiction of the courts of the state in which full faith and credit for the judgment are claimed. That is as far as the Idaho State court could have proceeded in the case at bar. By denying the prior and exclusive jurisdiction of the Washington State court it refused to give full faith and credit to the perfectly "legal" and "valid" judgment of that court which respondent had fully recognized.

It may be, in view of the denial by this Court to grant certiorari in the case of *Pelkes, et al.* vs. *Katherine Mason, et al.,* No. 379, October Term, 1936, that this court felt that such full faith and credit had not been denied by the Idaho Courts because of a failure to prove, in those courts, the relevant Washington laws and decisions.

That matter is of no great importance here as we are not attacking the validity of the Idaho State Court's judgment in these proceedings.

Since both of the state court's judgments involved herein are final and not subject to review it may be that we are confronted with the anomaly mentioned in the case of *Worcester County Trust Company* vs. *Riley* (58 S. Ct. 185, 302 U. S. 292), to-wit:

> "• • • conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action" (at page 299).

It is a condition "which the constitution does not forestall", (page 298).

Frankly, petitioner herein would much prefer that this court sustain the jurisdiction of the United States District Court to entertain the interpleader action, for the reason that the court would be compelled to review and weigh the decisions of the two state courts and pass upon their relative merits. Since such a decision must perforce be in favor of the Washington judgment it would settle and simplify all proceedings that may be had in the future to make it effective. However, our interests must give way when the honest and correct solution of the legal problem involved demands it.

Nothing has been said in respondent's brief that creates the slightest impression that a statute of the United States can, in accordance with our constitution, impose the power on a United States court to review collaterally the judgment of a state court where no federal question is involved or to weigh the relative merits of the conflicting decisions of two state courts and determine which should be enforced, or otherwise interfere with the proceedings of either.

From page 39 to the end of its brief respondent advan[illegible] and discusses the proposition

> "Idaho State Court Judgment and Decree is Res Judicata and Parties are Estopped from Questioning Validity".

With that general proposition petitioner has no quarrel *except* that there being no jurisdiction in that court over the subject matter it would appear that any aggrieved litigant always had the legal right to attack the judgment in any appropriate collateral action. But petitioner is not interested in that particular question at this time. Our position is that inasmuch as a competent Washington State Court, sitting in probate, had jurisdiction of the proceedings entitled "Estate of Amelia Pelkes," which proceedings were not closed until the final decree of May 31, 1935, and in which proceedings the title to the stock in the Sunshine Mining Company was adjudicated as between Pelkes and the Masons, that final decision was just as conclusive as the Idaho State Court's decision and therefore equally res judicata. It had the merit of having first acquired jurisdiction of the subject matter; of having first rendered a final decree wherein and whereby the rival claims of the interested parties were adjudicated; of having its final judgment pleaded as a defense in the action in the Idaho State courts. The decree although made by a probate court was as conclusive as the judgment of any court could be.

> "The decisions unquestionably hold that the probate court of Cook County is a court within the meaning universally accorded that term. In determining the rights of creditors the function of the probate judge is judicial. He hears and determines the matters submitted and enters orders therein. His adjudication is final and conclusive unless, in the manner provided by law, his judgment is reversed or set aside on appeal or

review. Herman on Estoppel and Res Judicata, Vol. 1, page 9-392; U. S. *v.* Paisley, 26 Fed. Supl. 237 (Dist. Ct. Ill. 1938)."

Respondent Sunshine Mining Company has made no effort to show that the judgment rendered May 31, 1935, by the Washington court, sitting in probate, did not finally and conclusively, as between Pelkes and Masons, establish the title to the Sunshine stock to be in Pelkes. Said respondent actually admitted its recognition of that final judgment and explained how it had governed itself accordingly by reissuing certificates in accordance therewith.

It appears to argue that "since" it was made a party defendant in the Idaho State Court case and "since" the Oregon group presented its defense of estoppel by judgment of the Washington court in that case the decision of that court is res judicata. The citations quoted on pages 42 and 43 of said respondent's brief are accurate, but not applicable. Omitting the effect of lack of jurisdiction of the subject matter in the Idaho court (due to the prior judgment in Washington), the effect of the Idaho State court's judgment is to make it *res judicata in that State,* but not in Washington, since an Idaho court has no power to nullify the proper judgment of the court of another State. In this connection the following excerpt from the decision of *Sanders* v. *Armour Fertilizer Works,* 292 U. S. 190; 78 L. Ed. 1206 (cited by both sides) is peculiarly in point:

> "The Armour Fertilizer Works asks nothing under any Texas law. Brougt into the District Court against its will, it was held there against its protest and enjoined from proceeding further in Illinois. It now claims priority of right and only asks what it would have secured but for the injunction. Under such circumstances, to hold that the statutes of Texas control would destroy rights duly obtained in Illinois; would permit insurance companies, by interpleader proceed-

> ings, to change the position of defendants; and in effect, seriously interfere with the impartial adjustment of existing equities. We think Congress had no intention to permit such destruction of acquired rights if, indeed, it had power to do so." *Sanders* v. *Armour Fertilizer Works, supra* (p. 201; p. 1211).

We have heard af cases where counsel have talked themselves out of court. It would seem that that very thing has happened to respondent here.

It urges the point that "Since the Sunshine Mining Company was made a party to the case in the Idaho State court", it is concluded thereby. (Page 41, Brief of Respondent Sunshine Mining Company.) And as it appears that it is bound by that decision and *subject to liability* if it fails to comply with that judgment and is possibly subject to a double liability (possibly, largely due to the fact that it patently espoused the cause of the Masons in the Idaho State courts) it would appear to petitioner that the respondent negatives by its argument what it alleged in its bill of interpleader, i. e., that it is a mere stakeholder and disinterested in the proceedings, except insofar as they would establish which of the parties, Treinies or Masons, had the better right.

> "Assertion by the complaint of entire disinterestedness is essential to a bill of interpleader."
> *Sanders* v. *Armour Fertilizer Works, supra.*

> "Interpleader must be denied if stakeholder has any interest."
> *Stusser* v. *Mutual Union Insurance Co.*, 127 Wash. 449; 221 Pac. 331; 15 R. C. L. 226.

In order to give effect to the judgment of the Superior Court of Washington, sitting in Probate (decree of May 31, 1935), the Washington group filed an action (R. 244) after first obtaining permission to do so (R. 243) entitled "John

Pelkes and Evelyn H. Treinies, Plaintiffs, *vs.* Katherine Mason, T. R. Mason, Lester H. Harrison, Walter H. Hanson, F. C. Keane, Richard S. Munter, and Sunshine Mining Company, Defendants." This action was filed August 12, 1936. Due to the death of John Pelkes on January 19, 1937, the Seattle National Bank, as administrator, together with the petitioner, filed their amended complaint (R. 256). The order granting permission to file the foregoing action is set out at length at page 243 of the Transcript of Record herein. It shows:

> "* * * that plaintiffs be and they hereby are granted permission to file the complaint herewith entitled as above *as an original bill in the nature of a supplemental bill for the purpose of giving effect to a judgment of this court* rendered in case No. 15496 entitled "In the matter of the estate of Amelia Pelkes, deceased" on May 31, 1935."

In said action, to quote from respondent's Sunshine Mining Company, brief, page 15:

> "Pelkes and Treinies were seeking a money judgment for damages which they alleged they were entitled to by reason of the Sunshine Mining Company refusing to recognize Evelyn H. Treinies as the owner of said identical stock (R. 256, Ex. 7)".

Further prosecution of the action referred to was halted by order of the United States District Court in these proceedings. Clearly, the interest of respondent, Sunshine Mining Company, in this litigation appears from the foregoing. Naturally, a judgment in favor of the Idaho group in the present proceedings would free respondent Sunshine Mining Company from the necessity of recognizing petitioner as owner of the stock in question but, also from *per-*

sonal liability for having refused to so recognize her as alleged in the complaint and amended complaint in the Washington proceedings just above mentioned.

San Francisco, California, September 20, 1939.

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